

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

NANCY E. GARY,	)	CV 03-172-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Jo ANNE B. BARNHART, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
	)	

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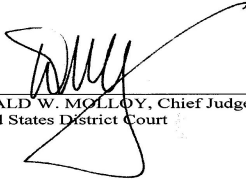
In response to a letter from Plaintiff's counsel informing the Court of the resolution of this matter, the Court instructed counsel to dismiss the case by filing a notice of dismissal pursuant to Rule 41(a)(1), Fed. R. Civ. P. The Plaintiff failed to do so or to otherwise effect service, and United States Magistrate Judge Erickson issued Findings and Recommendations concluding that the case should be dismissed without prejudice pursuant to Rule 4(m), Fed. R. Civ. P.

Plaintiff Gary has not objected to Judge Erickson's

recommendation and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Erickson's recommendation and therefore adopt it in full. It is accordingly HEREBY ORDERED that this matter is DISMISSED WITHOUT PREJUDICE pursuant to Rule 4(m), Fed. R. Civ. P.

DATED this 23<sup>rd</sup> day of May, 2006.



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DONALD W. MOLLOY, Chief Judge  
United States District Court